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Before the
Federal Communications Commission
Washington, D.C. 20554

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DEC - 1 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1 /
For Local Exchange Carriers)	
)	
Interexchange Carrier Purchases of)	CCB/CPD File No. 98-63
Switched Access Services Offered by)	
Competitive Local Exchange Carriers)	
)	
Petition of U S WEST Communications, Inc.)	CC Docket No. 98-157
For Forbearance from Regulation as a Dominant)	
Carrier in the Phoenix, Arizona MSA)	

**COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION
ON PETITIONS FOR RECONSIDERATION**

The United States Telecom Association (USTA) respectfully submits its comments on petitions for reconsideration filed October 22, 1999 in the above-referenced proceeding.¹ USTA is the nation's oldest trade association for the local exchange carrier (LEC) industry. USTA represents more than 1,200 telecommunications companies worldwide that provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service.

USTA supports the petitions filed by Bell Atlantic and GTE and opposes the petition filed by Network Access Solutions. USTA also has requested Commission clarification of two issues raised in the Commission's Order regarding the treatment of non-price cap services under the pricing flexibility framework and the application of the rules to tandem multiplexers and

¹ Formerly the United States Telephone Association.

dedicated tandem trunk ports. USTA urges the Commission to adopt USTA's recommendations contained in USTA's petition.

Both Bell Atlantic and GTE seek reconsideration of the Commission's decision to eliminate the low-end adjustment mechanism for those price cap LECs that qualify for and choose the pricing flexibility offered in the *Fifth Report and Order*. Bell Atlantic states that the Commission's decision threatens its commitment to ensuring that the price cap formula does not force LEC rates down to confiscatory levels and thereby results in an unconstitutional taking. Bell Atlantic notes that the Commission's decision is contrary to its own arguments before the D.C. Circuit Court of Appeals as well as the Court's decision in *United States Tel. Ass'n v. FCC*, 1999 WL 317035, No. 97-1469 (D.C. Cir. May 21, 1999). Bell Atlantic also points out that the decision violates the principle established by the U.S. Supreme Court in *Nolan v. California Coastal Comm'n*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) that the government may not condition the granting of a discretionary benefit on a party's willingness to give up a constitutional right that has little or no relationship to the benefit. GTE also states that the decision is unlawful because it fails to preserve its rights guaranteed by the Fifth Amendment. USTA shares these concerns and urges the Commission to reconsider its decision in this regard.

During consideration of the pricing flexibility framework, USTA devised a method to limit the problem articulated by Bell Atlantic and GTE. USTA recommended to Commission staff that price cap carriers should forgo the low-end formula adjustment only for the particular services that qualify for pricing flexibility. This would prevent price cap carriers from having to make a choice whether to give up pricing flexibility in competitive areas or to give up the low-end formula adjustment. USTA provided the Commission with a mechanism regarding how the

low-end adjustment would be made when competitive service and regulated service revenues are combined and the reported earnings warrant a low-end formula adjustment.²

Pursuant to USTA's mechanism, if the low-end adjustment were triggered, the competitive service demand would be repriced at the corresponding average price cap tariff rate. If the repriced revenue exceeds the actual competitive service revenue included in the low earnings, the full low-end adjustment amount would be reduced. Under this conservative approach, lower competitive revenues associated with competitive prices below average tariff rates would lead to a reduction in the low-end adjustment recovery from regulated rates because recovery would be reduced by the revenue increment that the repriced revenue exceeds the actual competitive service revenue. Once any low-end adjustment has been determined, the amount would be allocated proportionally between actual total regulated and competitive service revenue shares. Such a mechanism could ameliorate some of the concerns raised by Bell Atlantic and GTE.

GTE also requests that the Commission revise Section 69.123(d) of its rules so that it is consistent with the *Fifth Report and Order* which eliminated the prerequisites for the deaveraging of trunking basket service rates. USTA supports GTE's recommendation to revise the rules.

Network Access Solutions (NAS) seeks reconsideration of the market segment and the trigger for Phase I adopted by the Commission. NAS complains that the triggers are more lenient than those proposed by several price cap LECs in their petitions for forbearance. The basis for the NAS petition is an inappropriate comparison of the Commission's triggers necessary to obtain pricing flexibility with the LECs' petitions that suggested triggers necessary to obtain forbearance from all regulation. Since the relief differs, it makes sense that the triggers

² USTA Ex Parte Letter, CC Docket No. 96-262, January 27, 1999.

would differ as well. NAS' petition is based on LATA-wide data while the Commission's framework is designed for MSA and non-MSA areas. USTA agrees with the Commission that MSAs best reflect the segments of the market that competitors have chosen to enter.³ LATAs have no meaning for competitive LECs. In some cases, LATAs encompass an entire state and competitive LECs have not entered new markets on a statewide basis. The NAS' petition relies on a comparison of apples and oranges, which is an unjustifiable basis for reconsideration.

The NAS petition does not adequately represent the nature of the triggers adopted by the Commission. As the Commission explained, the triggers it adopted for Phase I demonstrate that there is irreversible, sunk investment by competitors in the facilities needed to provide the services at issue. The trigger is conservative in that it limits the number of qualifying collocation arrangements to only operational fiber-based collocation and fails to recognize the presence of competitors that do not use collocation and have completely bypassed the incumbent LEC's facilities. In addition, the Commission has required that at least one competitor relies on transport facilities provided by an entity other than the incumbent LEC at each wire center listed as the site of an operational collocation arrangement. The trigger also recognizes the fact established in the various petitions for forbearance that demand is concentrated in particular areas. Thus, the Commission also permits a showing that collocation represents a significant percentage of incumbent LEC revenues. The Commission's triggers are reasonable indicators of the development of competition. NAS' suggestions fail to reflect the development of competition and should be rejected.

In addition, the Commission sought to establish triggers that were easily verifiable in order to ease administrative burdens and to recognize the fact that competitive LECs do not have to report their revenues and facilities. NAS would make the Commission's criteria even more

³ *Fifth Report and Order* at para 72.

complex and would substantially increase the number of filings required to obtain regulatory relief. Such an outcome would only serve to delay the benefits of competition to customers. NAS' petition is contrary to the public interest and should be denied.

Respectfully submitted

UNITED STATES TELECOM ASSOCIATION

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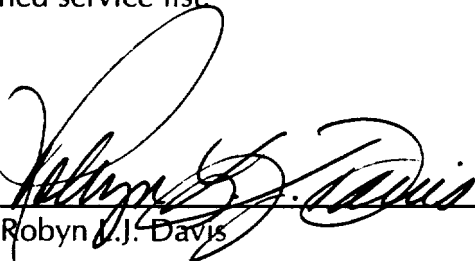
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December 1, 1999

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on December 1, 1999 Comments of the United States Telecom Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.


Robyn L.J. Davis